



MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment
FROM: Stephen Cochran, AICP, Case Manager
 Joel Lawson, Associate Director. Development Review
DATE: January 7, 2014
SUBJECT: Extension Request – BZA Case 17696-C, 2100 M Street, NW

OP RECOMMENDATION:

Although the Office of Planning (OP) would usually be dis-inclined to recommend a 3rd extension of a BZA Order, because the subject property has recently changed ownership, OP recommends the Board:

- **Waive § 3130.6’s limitation** that the Board shall grant no more than one extension of the two-year time period specified in § 3130.1, during which time an application for a building permit pursuant to a BZA order is to be filed; and
- **Approve an extension of Order 17696**, pursuant to § 3130.6;

SUMMARY OF APPROVED PROJECT AND PRVIOUS BZA ORDERS

Applicant: Liberty 2100 M Street, L.P.	Property Address: 2100 M Street, NW	Legal Address: Square 72, Lot 75	Ward 2; ANC 2A
Project Summary:	Renovation & expansion of C-3-C office building, using height and FAR gained through TDRs in New Downtown Receiving Zone. Board granted 3 variances and 1 SE for parking & loading; 1 height variance; 1 setback Special Exception		
Date of Order Issuance: December 20, 2007	Previous Extensions: Effective December 15, 2009; decisions on December 6, 2011 and January 10, 2012, with issuance of Order on January 20, 2012		
Date of Order Expiration:	December 20, 2013; Extension request filed December 18, 2013		

2100 M Street, NW (center of photo)



EVALUATION OF THE EXTENSION REQUEST

Section 3031.6 of the Zoning Regulations allows for one two-year extension of a BZA approval for “good cause” shown upon the filing of a written request by the applicant before the expiration of the approval; provided that the BZA determines that certain requirements are met. As reflected on page 3 of Order 17696-B, the Board has previously determined that § 3100.5 permits the Board to waive t§ 3130.6’s one extension

of two-years limitation. Therefore the Board may grant an additional extension if it concludes that the following requirements are met:



- (a) **The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond.**

Evaluation: The application submitted to the BZA is dated December 18, 2013 and has been in the public record since the filing. §3130.9 further provides that a time extension filed at least 30 days prior to the expiration date, shall toll the expiration date to allow the BZA to consider the request.

The extension request was timely. However, at the time this report was written, OP was not able to determine if the application had been served on all parties and whether all parties had been given thirty days to respond.

- (b) **There is no substantial change in any of the material facts upon which the Board based its original approval of the application that would undermine the Board's justification for approving the original application.**

- **Zoning Regulations:** There has been no change affecting the project.
- **Surrounding Development:** A new condominium apartment building and a new hotel have been constructed within two blocks of the project site since the application was approved, but these do not change the facts on which the Board based its original approval.

- (c) **Proposed Development:** The application indicates that no changes to the approved development are proposed as part of this extension request. Tab I of the applicant's filing indicates that the property continues to be marketed as an existing 290,000 square foot office building with zoning potential and approved relief that would permit a maximum of 415,000 square feet of office or office/residential space.

- (d) **The applicant demonstrates that there is good cause for such extension, with substantial evidence of one or more of the following criteria.**

- (1) **An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control;**
- (2) **An inability to secure all required governmental agency approvals by the expiration date of the Board's order because of delays that are beyond the applicant's reasonable control; or**
- (3) **The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control.**

The applicant has demonstrated good cause. Despite the two previous extensions of Order 17696, the previous owner had not developed construction drawings or filed for a building permit for the project for which the approved zoning relief was required. The new owner was not, therefore, able to fulfill criterion (d) (2) above by filing for a building permit by December 20, 2013.

While the affidavit under Tab C is not specific enough to demonstrate fulfillment of criterion (d) (1) above, it does make clear that post-2008 financing criteria and the changes in Washington's residential and commercial markets have made it difficult to secure financing for an office building.

An extension would enable the new owner to continue marketing the project proposed by the previous owner while evaluating whether a different mix of uses would be more appropriate and financeable.